

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY SMITH,

No C-08-5241 VRW (PR)

Plaintiff,

v

ORDER OF DISMISSAL

GREG AHERN, SHERIFF, et al,

Defendant(s) .

(Doc # 6)

I

Plaintiff, an inmate at Santa Rita County Jail in Dublin, California, has filed a pro se complaint under 42 USC § 1983 alleging that he was wrongly arrested by the Piedmont police department and wrongly convicted of burglary and sentenced to 38 years to life in Alameda County superior court.

II

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 USC § 1915A(a).

1 The court must identify cognizable claims or dismiss the complaint,
2 or any portion of the complaint, if the complaint "is frivolous,
3 malicious, or fails to state a claim upon which relief may be
4 granted," or "seeks monetary relief from a defendant who is immune
5 from such relief." Id § 1915A(b). Pleadings filed by pro se
6 litigants, however, must be liberally construed. Balistreri v
7 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

8 To state a claim under 42 USC § 1983, a plaintiff must
9 allege two essential elements: (1) that a right secured by the
10 Constitution or laws of the United States was violated, and (2) that
11 the alleged violation was committed by a person acting under the
12 color of state law. West v Atkins, 487 US 42, 48 (1988).

14 III

15 Plaintiff's civil suit against the defendants on account
16 of their involvement in his alleged wrongful arrest and in helping
17 secure his alleged wrongful conviction and sentence must be
18 DISMISSED WITHOUT PREJUDICE under the rationale of Heck v Humphrey,
19 512 US 477 (1994). See Trimble v City of Santa Rosa, 49 F3d 583,
20 585 (9th Cir 1995).

21 Heck generally bars claims challenging the validity of an
22 arrest, prosecution or conviction. See Guerrero v. Gates, 442 F3d
23 697, 703 (9th Cir 2006). Further, Heck bars a § 1983 action for
24 allegedly unconstitutional conviction or imprisonment, or for other
25 harm caused by actions whose unlawfulness would render a conviction
26 or sentence invalid, as is the case here, unless the conviction or
27 sentence first has been reversed on direct appeal, expunged by

1 executive order, declared invalid by a state tribunal authorized to
2 make such determination, or called into question by a federal
3 court's issuance of a writ of habeas corpus. Heck, 512 US at
4 486-87. Because plaintiff's conviction has not yet been so
5 invalidated, his civil suit against the defendants is not cognizable
6 under § 1983. See id at 487.

7 Any claim by a prisoner attacking the validity or duration
8 of his confinement must be brought under the habeas sections of
9 Title 28 of the United States Code. Calderon v Ashmus, 523 US 740,
10 747 (1998). Plaintiff's request for a new trial, therefore, also
11 must be DISMISSED WITHOUT PREJUDICE to him filing a petition for
12 writ of habeas corpus under 28 USC § 2254 after exhausting state
13 judicial remedies. See Trimble, 49 F3d at 586.

14
15 IV

16 For the foregoing reasons, the action is DISMISSED WITHOUT
17 PREJUDICE.

18 The clerk shall close the file and terminate all pending
19 motions as moot.

20
21 IT IS SO ORDERED.

22
23 
24 VAUGHN R WALKER
United States District Chief Judge